

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of Application of)	
)	
MOBILE RELAY ASSOCIATES)	FCC File No. 0000400166
)	
Licensee of Private Land Mobile)	
Industrial/Business Radio Station WPSR337)	
Located in Los Angeles, California)	

ORDER ON RECONSIDERATION

Adopted: June 17, 2002

Released: June 20, 2002

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. On July 31, 2001, James A. Kay, Jr. (“Kay”) filed a petition for reconsideration of the license grant to Mobile Relay Associates (“MRA”) for Station WPSR337, Los Angeles, California.¹ MRA filed an opposition to the Kay Petition,² and Kay filed a reply.³ For the reasons discussed below, we grant the Kay Petition and return MRA’s application to pending status.

II. BACKGROUND

2. In 1993, Kay filed an application requesting authority to operate a Business Radio Service station in the Los Angeles area on frequency 508.1125 MHz.⁴ On July 5, 1994, the Private Radio Bureau, Licensing Division (Licensing Division)⁵ informed Kay that, because Kay, through counsel, had declined to provide information that the Licensing Division had sought on January 31, 1994, Kay’s application was being dismissed⁶ without prejudice for failure to prosecute.⁷ On July 27, 1994, Kay filed a petition seeking reconsideration of the July 1994 Dismissal.⁸ That petition remains pending.

¹ See Petition for Reconsideration, filed on July 31, 2001 (“Kay Petition”).

² Opposition to Petition for Reconsideration (filed Aug. 15, 2001) (“Opposition”).

³ Reply to Opposition [to] Petition for Reconsideration (filed Aug. 28, 2001) (“Reply”).

⁴ See FCC File No. 415060 (“Kay application”).

⁵ The pertinent functions of the Licensing Division are now administered by the Public Safety and Private Wireless Division, Licensing and Technical Analysis Branch.

⁶ Kay’s application previously was dismissed as defective on February 17, 1994, but returned to pending status on April 19, 1994. See Letter to James A. Kay, Jr., from W. Riley Hollingsworth, Deputy Chief, Licensing Division (dated Apr. 19, 1994).

3. On March 13, 2001, MRA applied for a license to operate a Business Radio Service station in the Los Angeles area on frequency 508.1125 MHz.⁹ MRA's application was granted on July 17, 2001. Kay filed the Kay Petition seeking reconsideration of the grant on July 31, 2001. MRA filed an opposition to the instant Petition on August 15, 2001, and Kay filed a reply to MRA's opposition on August 28, 2001.

III. DISCUSSION

4. Kay asserts that grant of MRA's application was improper because it conflicts with Kay's 1993 application, which Kay maintains still has not been processed by the Commission.¹⁰ MRA, in opposition, speculates that Kay's application was dismissed sometime in 1995 because it was defective. MRA contends that because the Commission had not yet implemented its Universal Licensing System ("ULS") and due to inaccuracies of certain Commission licensing records, ULS does not reflect the dismissal.¹¹ It further argues that, whether the Kay application was formally dismissed or whether it should have been dismissed, it was, in either event, no longer listed as "pending" in the Commission's database.¹²

5. In fact, however, as noted above, Kay's application was dismissed on July 5, 1994 for failure to prosecute. Kay filed a timely petition for reconsideration of the dismissal, and that petition remains pending. Under these circumstances, we agree with Kay that MRA's application should not have been granted. Had Licensing Division staff been aware of the filing of the Kay July 1994 Petition, it would have – in keeping with its own practices – held in abeyance the MRA application until Kay's petition was addressed.¹³

6. In light of the foregoing, we grant Kay's instant Petition because we conclude that grant of MRA's application was premature. Consequently, we will set aside the MRA grant of license for Station WPSR337 and return MRA's application to pending status, pending resolution of Kay's July 1994 Petition.

⁷ See Letter to James A. Kay, Jr., from W. Riley Hollingsworth, Deputy Chief, Licensing Division (dated July 5, 1994) ("July 1994 Dismissal"). In addition to the Kay application, the Licensing Division referenced 15 other applications that it said were being dismissed. *Id.*

⁸ See Petition for Reconsideration (filed July 27, 1994, *erratum* filed Aug. 10, 1994) ("July 1994 Petition"). In addition to the Kay application, Kay's July 1994 Petition also sought reconsideration of the dismissal of 14 of the other 15 applications dismissed in the July 1994 Dismissal. *See id.*

⁹ See FCC File No. 0000400166 (filed Mar. 13, 2001).

¹⁰ Kay Petition at 1.

¹¹ Opposition at 3.

¹² *Id.* at 3.

¹³ *Cf., e.g.,* S&L Teen Hospital Shuttle, *Memorandum Opinion and Order*, 16 FCC Rcd 8153, 8155 ¶ 5 (2001).

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the petition for reconsideration filed by James A. Kay, Jr. on July 31, 2001 IS GRANTED to the extent indicated herein.

8. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the grant of the license for Station WPSR337 IS SET ASIDE; and the application, FCC File No. 0000400166, filed by Mobile Relay Associates on March 13, 2001, IS RETURNED to pending status and SHALL REMAIN in such status PENDING RESOLUTION of the petition for reconsideration filed by James A. Kay, Jr. on July 27, 1994.

9. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry
Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau